

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of the Applications of)	
)	
BT North America Inc.)	
)	
Application for Modification of Earth Station)	
E980183 to add EUTELSAT II-F2)	File No. SES-MOD-19990811-01485
at 12.5 degrees W.L. as a Point of Communication)	
)	
CBS Broadcasting, Inc.)	
)	
Application for Modification of Earth Station)	
KA327 to add EUTELSAT II-F2)	File No. SES-MOD-19990831-01488
at 12.5 degrees W.L. as a Point of Communication)	
)	
)	

ORDER

Adopted: February 1, 2000

Released: February 1, 2000

By the Chief, International Bureau:

I. INTRODUCTION

1. With this Order, we authorize two U.S. earth stations to provide international satellite service to and from the United States using the European Telecommunications Satellite Organization's (EUTELSAT's) II-F2 satellite, located at the 12.5° W.L. orbit location. This action represents another step in implementing U.S. market-opening commitments to satellites licensed by other countries. Allowing EUTELSAT II-F2 to serve the U.S. market should stimulate competition in the U.S. Fixed-Satellite Services market, providing consumers more alternatives in choosing communications providers and services. Increased competition may also lead to reduced prices for those services and further technological innovation.

II. BACKGROUND

2. The Commission's *DISCO II Order*¹ implemented for satellite services the market

¹ Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*).

opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement). These commitments would allow new entrants and technologies into the U.S. market, thus advancing the growth of satellite services around the globe. In particular, the *Disco II Order* established a framework under which the Commission would consider requests for non-U.S. satellites to serve the United States. To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.² This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a permitted point of communication.

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed under the jurisdiction of another administration,³ a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign space station complies with the Commission's technical, legal and financial qualification requirements. The first earth station application seeking to communicate with a particular foreign satellite must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.⁴ Financial information is not required if the satellite has already been launched, however, nor is technical information required if the satellite has completed international coordination with the United States.⁵

4. BT North America Inc. (BTNA) and CBS Broadcasting, Inc. (CBS) seek authority to provide Fixed-Satellite Services between the United States and Europe via the EUTELSAT II-F2 satellite located at 12.5° W.L.⁶ BTNA seeks authority to transmit only to EUTELSAT II-F2 in the 14.00–14.50 GHz frequency bands. CBS seeks authority to receive downlink transmission from EUTELSAT II-F2 in the 10.95–11.20 GHz and 11.45–11.70 GHz frequency bands, and to transmit to EUTELSAT II-F2 in the 14.00–14.50 GHz frequency bands.

² *Id.* at 24174 (para. 186).

³ *Id.* at 24174 (para. 188).

⁴ 47 C.F.R. § 25.137. This regulation requires foreign satellites to provide the information required from U.S. space stations under 47 C.F.R. § 25.114.

⁵ 47 C.F.R. § 25.137(b).

⁶ BTNA seeks to modify Earth Station E980183 located in Washington, D.C.; CBS seeks to modify Earth Station KA327 located in Stamford, Connecticut. Both applicants had initially requested to add EUTELSAT I-F5 as a second point of communication but later amended their applications to delete access to this satellite. Letter from Eric H. Loeb, Counsel for BT North America Inc., to Donald Abelson, Chief, International Bureau, FCC, December 8, 1999. Letter from Ramsey L. Woodworth, Counsel for CBS Broadcasting, Inc., to Magalie Roman Salas, Secretary, FCC, December 13, 1999.

5. Loral Space & Communications Ltd. (Loral), which holds a Commission license to launch and operate a satellite at 12° W.L., filed petitions to deny the BTNA and CBS applications. Loral and EUTELSAT subsequently negotiated a coordination agreement that resolved all Loral's objections, and Loral withdrew its petitions.⁷

III. DISCUSSION

A. Space Station Analysis

6. BTNA and CBS seek authorization to communicate with the EUTELSAT II-F2 space station. We analyze the public interest in granting such authority by evaluating these applications under the framework set out in *DISCO II*, considering the effect on competition in the United States, spectrum availability, eligibility requirements and operating requirements. In addition, we consider issues of national security, law enforcement, foreign policy and trade policy, when those issues are brought to our attention by the Executive Branch with regard to a particular application. We discuss these in turn.

1. Competition

7. In *DISCO II*, the Commission established a rebuttable presumption in favor of entry by satellites licensed by other WTO Members and certain Intergovernmental Organizations (IGOs) to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement. These commitments include Fixed-Satellite Services, except for Direct-To-Home (DTH) service. In *DISCO II*, the Commission specifically indicated that EUTELSAT, which is an IGO, would be entitled to the presumption in favor of entry. Further, BTNA and CBS seek to provide non-DTH Fixed-Satellite Service. No party to this proceeding has presented any argument to rebut this presumption. Consequently, we find that permitting EUTELSAT to access the U.S. market will further competition in the United States.

2. Spectrum Availability

8. The scarcity of orbit and spectrum resources requires that the Commission consider spectrum availability as a factor whenever it decides to allow a foreign satellite to serve the U.S. market.⁸ This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. Thus, in *DISCO II* we stated that when grant of an

⁷ Letter from John Stern, Associate General Counsel for Loral, to Donald Abelson, Chief, International Bureau, FCC, December 10, 1999.

⁸ *DISCO II*, 12 FCC Rcd at 24158 (para. 149).

application would create interference with licensed systems, we may impose technical constraints on the foreign system's operations in the United States.⁹

9. Loral filed petitions to deny the BTNA and CBS applications because Loral holds a U.S. license to launch and operate its Telstar 12 satellite at the 12° W.L. orbit location. Loral claimed that EUTELSAT's satellite operations at 12.5° W.L. would interfere with Telstar 12. EUTELSAT and Loral have since negotiated a coordination agreement that resolves their coordination issues, and Loral has withdrawn its petitions to deny these applications.¹⁰ Loral's Telstar 12 satellite is currently authorized to operate at the 15° W.L. orbit location under special temporary authority granted in December 1999.¹¹ Given the 2 ½ degree separation between Telstar 12 and EUTELSAT II-F2, operation of EUTELSAT II-F2 will not affect the operations of Telstar 12 or any other U.S.-licensed satellites nor contravene the Commission's spectrum and frequency management policies.

3. Eligibility Requirements

10. The Commission's order in *DISCO II* requires that space station operators not licensed by the Commission meet the same legal, financial and technical qualifications required of U.S.-licensed space station operators.

a. Legal Qualifications and Financial Qualifications

11. Nothing in the record raises concerns about EUTELSAT's legal qualifications to provide satellite services in the United States. Further, we need not examine EUTELSAT's financial qualifications to construct and launch satellites, because EUTELSAT II-F2 is already in orbit.

b. Technical Qualifications

12. The Commission's satellite licensing policy maximizes use of the geostationary orbit by requiring applicants to demonstrate that their system can be spaced as close as two degrees in orbit from adjacent systems.¹² Satellite systems licensed outside the United States must also

⁹ *Id.* at 24159 (para. 150).

¹⁰ *See* note 7, *supra*.

¹¹ *See* Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, FCC to John P. Stern, Associate General Counsel for Loral, December 10, 1999.

¹² *See* Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, Report and Order in Docket 81-704, 54 Rad. Reg. 2d 577 (1983), and 48 Fed. Reg. 40233 (Sept. 6, 1983).

demonstrate compliance with our two-degree spacing policy before being authorized to provide service in the United States.

13. The BTNA and CBS earth station applications each include the required technical information for EUTELSAT II-F2.¹³ We conclude that the EUTELSAT II-F2 satellite meets the Commission's two-degree spacing requirements. As with U.S. satellites, the Commission may, in the future, authorize services over U.S.-licensed or non-U.S.-licensed space stations that are two-degree compliant at orbital locations as close as two degrees from the EUTELSAT II-F2 satellite. Should the Commission do so, EUTELSAT would be expected to coordinate, in good faith, with the licensee of that satellite.

14. Finally, CBS requests authority to receive downlink transmissions from EUTELSAT in the 10.95-11.20 GHz and 11.45-11.70 GHz frequency bands. The use of these frequency bands by the Fixed-Satellite Service in the United States is limited to international service under footnote NG104 to the United States Table of Frequency Allocations in Part 2.106 of the Commission's rules.¹⁴ Accordingly, CBS has applied only for authority to provide international services in its application, and we therefore limit its authorization to the provision of service between the United States and international points. CBS is not authorized to provide domestic service within the United States.

4. Other Public Interest Issues

15. Under *DISCO II*, the public interest analysis for considering non-U.S. satellite access to the U.S. market includes issues of national security, law enforcement, foreign policy and trade policy, when Executive Branch agencies bring those issues to our attention. No such issues have been raised against these applications.

5. Operating Requirements

16. Finally, the Commission's *DISCO II Order* requires that foreign satellite operators comply with all Commission rules applicable to U.S. satellite operators if they seek to provide service in the United States.¹⁵ Accordingly, EUTELSAT will be prohibited from providing service between the United States and any country in which EUTELSAT has entered into an exclusive agreement to provide satellite capacity for a particular service.¹⁶ This prohibition is a

¹³ Technical information requirements found at 47 C.F.R. § 25.114(c), applied to non-U.S.-licensed space stations by 47 C.F.R. § 25.137.

¹⁴ 47 C.F.R. § 2.106.

¹⁵ *DISCO II*, 12 FCC Rcd at 24168 (para. 173).

¹⁶ *Id.* at 24166 (para. 167).

uniform condition on all recently issued U.S. satellite operators' licenses. It is intended to facilitate global competition and to ensure that U.S. licensees have an opportunity to provide service around the world.¹⁷

B. Earth Station Analysis

17. Having found no problems in allowing EUTELSAT II-F2 to provide international Fixed-Satellite Service (excluding DTH) in the U.S. market, we turn to the BTNA and CBS earth station applications. BTNA seeks to modify its earth station license only by adding EUTELSAT II-F2 as an authorized point of communications. It requests no other technical changes to the earth station. Consequently, we do not need to consider any additional technical issues related to BTNA's earth station.

18. In contrast, CBS seeks to add digital video, voice, data and Internet carriers to its authorized earth station. CBS has confirmed, however, that this will not increase the earth station's effective isotropically radiated power (EIRP) or its EIRP density.¹⁸ We will allow CBS to operate these added digital carriers subject to the power and power density limitations set forth in our rules for narrowband and/or wideband transmissions in the Fixed-Satellite Service.¹⁹

IV. CONCLUSION

19. BTNA and CBS have demonstrated that their earth stations' communications with EUTELSAT II-F2 will be consistent with the Commission's policies regarding U.S. access to space stations licensed by foreign administrations. We therefore grant the earth station applications.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that Application File Number SES-MOD-19990811-01485 IS GRANTED and that BT North America Inc. earth station E980183 IS AUTHORIZED to transmit to the EUTELSAT II-F2 space station at 12.5° W.L. in the 14.00-14.50 GHz frequency band. This authorization is limited to the provision of Fixed-Satellite Service (excluding Direct-To-Home service, Direct Broadcasting Service, and Digital Audio Radio Service) between the United States and international points.

21. IT IS FURTHER ORDERED that Application File Number SES-MOD-19990831-01488 IS GRANTED and that CBS Broadcasting, Inc. earth station KA327 IS AUTHORIZED

¹⁷ *Id.* at 24165 (para. 166) and 24163 (para. 161).

¹⁸ Letter from Ramsey L. Woodworth, Counsel for CBS Broadcasting, Inc. to Magalie Roman Salas, Secretary, FCC, January 20, 2000.

¹⁹ 47 C.F.R. § 25.212 (c).

to communicate with the EUTELSAT II-F2 space station at 12.5° W.L. in the 14.00-14.50 GHz and the 10.95-11.20/11.45-11.70 GHz frequency bands. This authorization is limited to the provision of Fixed-Satellite Service (excluding Direct-To-Home service, Direct Broadcasting Service, and Digital Audio Radio Service) between the United States and international points. Further, effective isotropically radiated power (EIRP) levels and EIRP density levels are limited to those specified in section 25.212(c) of the Commission's rules, 47 C.F.R. § 25.212(c).

22. IT IS FURTHER ORDERED that access to EUTELSAT II-F2 shall be in compliance with the satellite coordination agreements reached between the United States and France regarding the operations of EUTELSAT II-F2.

23. IT IS FURTHER ORDERED that this Order is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261. This Order SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106 and 1.115, may be filed within 30 days of public notice of the release of this Order. This grant is subject to Section 1.110 of the Commission's rules. 47 C.F.R. § 1.110.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau